

**GUIDELINES FOR DETERMINING THE LENGTH OF STAY
OF JUVENILES INDETERMINATELY COMMITTED TO
THE DEPARTMENT OF JUVENILE JUSTICE**

ADOPTED BY THE BOARD OF JUVENILE JUSTICE
pursuant to Code of Virginia Section 66-10 (8)

REVISED OCTOBER 24, 2001

I. PURPOSE

These guidelines are intended to provide direction for the Department in determining the lengths of stay of wards in direct care; to link length of stay to offense behavior; to hold wards accountable for their behavior; to provide consistency among institutions and individual juveniles; to allow reasonable flexibility in accommodating individual case differences; to encourage increased communication with the community in the assessment and evaluation of the ward; and to accommodate wards' treatment needs as appropriate.

II. SCOPE

These length of stay guidelines apply to all juveniles who are committed to the Department for an indeterminate period of time.

The guidelines do not apply to juveniles determinately committed to the Department under the Serious Juvenile Offender Statute (Code of Virginia Section 16.1-285.1).

III. DEFINITIONS

Direct care: committed to the Department pursuant to Code of Virginia Sections 16.1-278.8(14) or 285.1 and residing in a juvenile residential facility operated or contracted for by the Department.

Early release date: the date that completes a ward's minimum length of stay. On or after this date, a ward who meets the criteria set out in these guidelines is eligible for release.

Early release incentive: a plan that may be implemented by the Director as a behavior management tool enabling eligible wards to earn their release prior to their "early release date" as established in Table 2 of these Guidelines.

Length of stay: the projected length of time a juvenile will spend in the Department's direct care and custody upon commitment by a court of competent jurisdiction.

Late release date: the date after which a ward will not be kept in direct care EXCEPT when the ward has not completed mandatory treatment or has committed a major or moderate institutional infraction within a specified time.

Mandatory treatment: clinical services or rehabilitative programs that must be completed in order for the ward to be released at any point prior to the statutory release date.

Offense: an act for which a juvenile is convicted or adjudicated guilty. Offenses that are nolle prossed or handled at intake are not counted in calculating length of stay.

Recommended treatment: clinical services or rehabilitative programs intended to enhance a youth's ability to function successfully in the community, which must be completed in order for the ward to be released at any point prior to the late release date.

Statutory release date: the date upon which the Department's legal authority to confine the ward expires. For wards covered by these guidelines, this is either their 21st birthday or the date which occurs 36 months **from the date of commitment**, whichever occurs first.

IV. PROCEDURES

A ward's length of stay will be established based on the number and the seriousness of offenses, and may be adjusted in exceptional cases for aggravating or mitigating circumstances. Mandatory and recommended treatment, which may affect a ward's length of stay, will be determined considering the ward's offense history and other unlawful behavior.

A. Initial Length of Stay Calculation.

- 1. Offense Seriousness** is determined based on the penalty structure established by the General Assembly for offenses committed by adults. Using Table 1, the ward's (a) most serious instant (committing) offense, and (b) most serious past offense are assigned to severity level 1 through 4. The resulting two numbers are combined in the pattern (a)-(b) to indicate the seriousness of the ward's offense behavior.

NOTE: the instant offense is **always** listed first, e.g., 4-3 refers to a level 4 instant offense, coupled with a level 3 prior offense. (Example: a youth committed for armed robbery (level 4) whose prior offenses include simple assault (level 1) and burglary (level 3) would be classified as 4-3.)

NOTE: Youth who have no past convictions are automatically assigned to Level 1 for prior offenses. (Thus, a youth with a Level 4 instant offense and no past offenses would be classified as 4-1.)

Length of Stay Guidelines for Indeterminately Committed Juveniles
Adopted as Revised by the Board of Juvenile Justice October 24, 2001.

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TABLE 1. SEVERITY LEVEL AND RELATED OFFENSES

LEVEL	TYPE OF OFFENSE	EXAMPLES
1	Class 1 Misdemeanors and unclassified felonies carrying a maximum sentence of one year	Simple Assault
2	Class 4, 5 and 6 Felonies and unclassified felonies carrying a maximum sentence of 10 years	Unauthorized Use Extortion
3	Class 3 Felonies and unclassified felonies carrying a maximum sentence of 20 years	Burglary Grand Larceny Malicious Wounding
4	Class 1 and 2 Felonies and unclassified felonies carrying a maximum sentence of more than 20 years	Armed Robbery Rape Arson

TABLE 2. INITIAL LOS STEPS AND ADJUSTMENTS TO DETERMINE FINAL LOS RANGE

Offense Severity determines the initial LOS Step, followed by adjustments (*) for chronic offense behavior and aggravating or mitigating circumstances:	RELEASE DATES Early - Late
1-1	Exceptional LOS of 3 - 6 months
1-2, 1-3, 2-1, 2-2 *	6 months - 12 months
*	9 months - 15 months
1-4, 2-3, 2-4, 3-1, 3-2, 3-3 *	12 months - 18 months
*	15 months - 21 months
*	18 months - 24 months
3-4, 4-1, 4-2, 4-3, 4-4 *	18 months - 36 months
*	21 months - 36 months
*	24 months - 36 months

2. Adjustment for chronic offense behavior.

A ward's length of stay will be increased when the offense history indicates chronic offense behavior as calculated below and illustrated in Table 2 above:

- a. All offenses (except those that were used to determine the severity level) are counted and given a weighted score:
 - one point for each misdemeanor;
 - two points for each felony.
- b. Length of stay is adjusted based on the total score, as follows:
 - 1) a score of 7 or less does not affect length of stay;
 - 2) a score of 8 to 11 increases length of stay by three months;
 - 3) a score of 12 or more increases length of stay by six months.

3. Aggravating and Mitigating Circumstances.

When a ward's case involves exceptional aggravating or mitigating circumstances, Department procedures shall provide a process for recommending, reviewing and approving an adjustment increasing or decreasing the ward's calculated length of stay by not more than one level in Table 2.

4. Special Circumstances

a. Violation of Probation.

The minimum length of stay for youth committed for Violation of Probation will be determined by the most serious criminal offense for which the youth was on probation at the time of commitment.

b. Violation of Parole.

When a juvenile is re-committed for violating parole without an adjudication of a new criminal offense, a new length of stay will be calculated as follows:

- 1) the current "violation of parole" offense will be counted as severity Level 1 in Tables 1 and 2; and

- 2) the new length of stay will NOT be aggravated for chronic offense behavior, but may be aggravated or mitigated as provided for in paragraph IV.A.3 , above.

c. Multiple commitments.

Wards who receive both an indeterminate commitment AND a determinate commitment will serve the commitments concurrently, and will remain in direct care until the last expiring of the determinate commitment ordered by the court or the length of stay calculated pursuant to these guidelines has been completed.

d. Charges pending at the time of commitment.

Following conviction on charges that were pending at the time of the initial commitment, the length of stay will be re-calculated by adding the new convictions to the instant offenses upon which the current length of stay had been established. Time already served in direct care will count toward length of stay.

e. New offenses by wards while in direct care.

If a ward commits an offense that results in a new commitment:

- 1) a new length of stay will be calculated for the new commitment and the resulting new minimum length of stay will be added to the minimum time remaining on the original length of stay at the time the offense was committed.

(For example, a ward with a length of stay of 6-12 months commits a new offense at the end of his third month, resulting in a new length of stay of 12-18 months; this new length of stay would be added to the 3 months remaining on the original length of stay.)

- 2) in addition to the new length of stay, new mandatory and recommended treatment goals may be specified, if appropriate.

B. Treatment Assignments Affecting Length of Stay

1. Mandatory Treatment.

- a. A given treatment may be made mandatory for a ward when:

- 1) The treatment is specifically related to the ward's offense history or self-reported behavior; and
 - 2) The service or program is approved by the Director as meeting specific criteria for mandatory treatment programs, including but not limited to: personnel qualifications; program operations, including a determined curriculum; and quality assurance and program evaluation.
 - b. Wards may appeal assigned mandatory treatment that is not directly related to an adjudicated offense or to institutional violations that are resolved through a due process hearing.
 - c. After the early release date, a ward will be considered for release when all mandatory treatment is completed.
 - d. A ward will not be released before his statutory release date unless all mandatory treatment is completed. When it becomes apparent that a ward will be unable to complete assigned mandatory treatment before his late release date through no fault of his own, the Department will take reasonable action to ensure that the mandatory treatment is provided -- by alternative means if necessary -- before the ward's late release date.
2. Recommended treatment.
- a. A treatment may be designated as "recommended" for a ward, even if the treatment is not directly related to the ward's offense behavior, when:
 - 1) the treatment (i) is available as a mandatory treatment, or (ii) is approved by the Director specifically as a recommended treatment, AND
 - 2) the ward has been identified as an appropriate candidate for the treatment through an established evaluation and assessment process.
 - b. Completion of recommended treatment (in addition to all mandatory treatment, if any) will qualify a ward for release consideration at any time after the early release date.

- c. A ward's release shall not be delayed beyond the late release date due to incomplete recommended treatment.

C. Minimum Requirements for Release Eligibility.

1. To be eligible for release **prior to the early release date**, the ward must meet criteria established by the Director consistent with section F. of these guidelines.
2. To be eligible for release at the **early release date**, a ward must:
 - a. complete all mandatory treatment goals (if any);
 - b. complete all recommended treatment;
 - c. be satisfactorily participating in the institutional program at the facility where the ward resides;
 - d. be participating satisfactorily in any academic, special education, or vocational program in which the ward is enrolled;
 - e. not have committed a moderate institutional infraction within 30 days, nor a major institutional infraction within 90 days, prior to release.
3. To be eligible for release at the **late release date**, the ward must:
 - a. satisfactorily complete all mandatory treatment goals (if any); and
 - b. not have committed a moderate institutional infraction within 30 days, nor a major institutional infraction within 90 days, prior to release.

D. Impact of Institutional Behavior on Length of Stay.

1. Except as otherwise provided by the Director pursuant to paragraph F below, up until the statutory release date, a ward will not be released:
 - a. within 30 days of committing a moderate infraction; or
 - b. within 90 days of committing a major infraction.
2. Administrative Adjustments to length of stay for serious offenses

If, as a result of a due process hearing, it is determined that a ward committed one of the following offenses, the ward's early and late release dates will be administratively increased as follows (but not to exceed the statutory release date calculated from the original date of commitment):

- a. AWOL from a non-secure facility or placement - 6 months
- b. Attempted escape from a secure facility or placement - 6 months
- c. Escape from a secure facility - 12 twelve months
- d. Assault on staff in a residential facility or placement - 6 months

3. New charges as a result of AWOL, escape or assault

- a. If new charges are filed as a result of an AWOL, escape, attempted escape or assault on staff and the youth is re-committed, a new length of stay will be calculated and added to the minimum time remaining on the current length of stay.
- b. The new length of stay and any extension administratively added to the old length of stay will be served concurrently.

E. Review for Transition and Release.

Each ward's progress will be reviewed at least monthly, in accordance with Department case management procedures, to determine readiness for transitional placement or release.

F. Director's authority to release

- 1. The Director retains the authority to release any indeterminately committed ward, having regard for the welfare of the juvenile and the interests of the public (Code of Virginia § 16.1-285).
- 2. The Director is authorized, but is not required, to implement an "early release incentive plan" as a behavior management tool that will permit indeterminately committed wards who exhibit positive behavioral adjustment to earn release up to 90 days prior to the "early release date" established in accordance with these Guidelines. Written procedures shall establish wards' eligibility requirements and the process by which the Department will review and approve the actual early release of qualified wards.
- 3. Murder and manslaughter

The Director will determine the length of stay of wards committed for murder and manslaughter. These wards are placed in the 18-36 month

category (or 21- 36 month or 24-36 month category if aggravated for chronic offense behavior) for review purposes only. If their progress warrants, beginning on their early release date they may be recommended to the Director for release consideration.

The Director must approve the release of any ward:

- a. committed for murder or manslaughter; or
- b. re-committed for **any charge, including** violation of parole, after a commitment for murder or manslaughter.

G. Notification of Length of Stay.

Whenever a ward's length of stay is established or changed, written notice of the length of stay shall be given to the ward, the ward's treatment team and parents or guardian, the court services unit, and the attorney of record as indicated in the ward's file, if available.